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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 2809/LA4/76. *Dated, Trivandrum, 28th March 1976*

The S. K. V. A. Co-operative Pharmacy and Stores (Acquisition and Transfer of Undertaking) Bill, 1976 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. Prasannan,
Secretary,
Legislative Assembly.

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Fourth Kerala Legislative Assembly
Bill No. 256

THE S.K.V.A. CO-OPERATIVE PHARMACY AND STORES (ACQUISITION AND TRANSFER OF UNDERTAKING) BILL, 1976

A

BILL

to provide for the acquisition of the undertaking of the S. K. V. A. Co-operative Pharmacy and Stores and the transfer of the undertaking to the Pharmaceutical Corporation (Indian Medicines) Kerala Ltd.

Preamble.—WHEREAS it is expedient to provide for the acquisition of the undertaking of the S.K.V.A. Co-operative Pharmacy and Stores and the transfer of the undertaking to the Pharmaceutical Corporation (Indian Medicines), Kerala Ltd.;

BE it enacted in the Twenty-seventh Year of the Republic of India as follows:—

1. *Short title and commencement.*— (1) This Act may be called the S.K.V.A. Co-operative Pharmacy and Stores (Acquisition and Transfer of Undertaking) Act, 1976.

(2) It shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "Administrator" means the Administrator of the Society;

(b) "appointed day" means the date on which this Act comes into force;

(c) "Company" means the Pharmaceutical Corporation (Indian Medicines), Kerala Ltd., being a Government Company as defined in section 617 of the Companies Act, 1956 (Central Act 1 of 1956), and having its registered office at Trichur in the State of Kerala;

(d) "Society" means the S.K.V.A. Co-operative Pharmacy and Stores, a co-operative society deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969), and having its registered office at Trichur;

(e) "Prescribed" means prescribed by rules made under this Act;

(f) "Share" means a share in the capital of the Society.

3. *Undertaking of Society to vest in Government.*—On the appointed day, the undertaking of the Society shall, by virtue of this Act, stand transferred to and vested in the Government and the Society shall be deemed to have been dissolved.

4. *General effect of vesting* :—(1) The undertaking of the Society shall be deemed to include all assets, rights, powers, authorities and privileges; and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve fund, investments and book debts; and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession, power or control of the Society in relation to its undertaking, and all books of account, registers, and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the Society in relation to its undertaking.

(2) All contracts and working arrangements which are subsisting immediately before the appointed day and affecting the Society shall, in so far as they relate to the undertaking of the Society, cease to have effect or be enforceable against the Society or any person who was surety, or had guaranteed the performance thereof, and shall be of as full force and effect against or in favour of the Government and enforceable as fully and effectually as if, instead of the Society, the Government had been named therein or had been a party thereto.

(3) Any proceeding or cause of action pending or existing immediately before the appointed day by or against the society in relation to its undestaking may, as from such commencement, be continued and enforced by or against the Government as it might have been enforced by or against the society if this Act had not been passed and shall cease to be enforceable by or against the society, its surety or guaranter.

5. *Power of Government to direct vesting of undertaking in company.*—

(1) Notwithstanding anything contained in sections 3 and 4, the Government may, by order in writing, direct that the undertaking of the society together with all its properties, assets, liabilities and obligations specified in subsection (1) of section 4 shall, instead of continuing to vest in the Government, vest in the Company either on the date of publication of the direction or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in that direction.

(2) Where an order vesting the undertaking of the Society in the Company is made under subsection (1), all the rights, liabilities and obligations of the Government in relation to the undertaking of the Society shall, on and from the date of such vesting, be deemed to have become the rights, liabilities and obligations, respectively of the Company.

(3) The Company shall, in the management and administration of the undertaking of the society, act in accordance with such directions, if any, as may be issued by the Government in this behalf.

6. *Duty to deliver possession of property acquired and documents relating thereto.*—(1) Where any property has vested in the Government or the company under this act, every person in whose possession or custody or

under whose control the property may be, shall deliver the property to the Government or the company, as the case may be, forthwith.

(2) Any person who, on the appointed day, has in his possession or under his control, any books, documents or other papers relating to the undertaking of the society, which have vested in the Government or the company under this Act shall be liable to account for the said books, documents and papers to the Government or the company, as the case may be, and shall deliver them up to the Government or the Company.

(3) The Government or the company may take, or cause to be taken, all necessary steps for securing possession of all properties which have vested in the Government or the company under this act.

7. *Duty to furnish particulars.*—The administrator shall, within one month from the appointed day or such further period as the Government may allow in this behalf, furnish to the Government or the company, as the case may be, a complete inventory of all the properties and assets of the society on the appointed day, all the liabilities and obligations of the society subsisting on that day and also all agreements entered into by the society and in force on that day (including agreements whether express or implied, relating to leave, pension, gratuity and other terms of service of any officer or other employee of the society) under which, by virtue of this Act the Government or the company has, or will have, or may have liabilities or obligations, and for this purpose, the Government or the company shall afford the society all reasonable facilities.

8. *Transfer of service of existing employees.*—(1) Every officer or other employee employed, immediately before the appointed day, in connection with the affairs of the undertaking of the Society shall, as from that day, become an officer or other employee of the Government and shall, as from the date of publication of the direction made under subsection (1) of section 5 or the date specified therein, become an officer or other employee of the Company and shall hold his office by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held under the Society, if this Act had not been passed and shall continue to do so, unless and until his employment in the Government or, as the case may be, in the Company, is terminated or until his remuneration, terms and conditions are duly altered by the Government or the Company:

Provided that if the alteration so made is not acceptable to any officer or other employee, his employment shall be terminated on payment to him by the Government or the Company, as the case may be, of an amount equivalent to three months' remuneration in the case of permanent employees and one month's remuneration in the case of other employees:

Provided further that nothing contained in this sub section shall apply to any officer or other employee, who has, by notice in writing given to the Government within thirty days from the appointed day, intimated his intention of not becoming an officer or other employee of the Government or the Company:

Provided also that nothing contained in this subsection shall apply to an officer or other employee referred to in subsection (2).

(2) Notwithstanding anything contained in subsection (1) any officer of Government deputed for employment in connection with the affairs of the undertaking of the Society and employed as such immediately before the appointed day shall, as from that day, revert to the service of the Government.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Society to the Government or the Company under subsection (1) shall not entitle any such officer or other employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, tribunal or other authority.

9. *Provident, Superannuation, welfare and other funds:*— (1) Where the Society has established a provident, superannuation, welfare or any other fund for the benefit of its officers or other employees and constituted a trust in respect thereof, the moneys relatable to the officers or other employees, whose services have become transferred, by or under this Act to the Government or the Company, shall, out of the moneys standing on the appointed day, to the credit of such provident, superannuation, welfare or other fund, stand transferred to, and vested in, the Government or the Company, as the case may be, free from any such trust.

(2) The moneys which stand transferred under subsection (1) to the Government or the company shall be dealt with by the Government or the Company, as the case may be, in such manner as may be prescribed.

10. *Payment of amount.*—(1) For the transfer under section 3, of the undertaking of the Society to the Government there shall be paid by the Government to each shareholder of the Society an amount equal to the value of the shares held by him in the Society immediately before the appointed day.

(2) The amount payable under subsection (1) shall be paid by the District Collector, Trichur, in cash, within a period of three months from the appointed day:

Provided that if the amount is not paid within the period aforesaid, the District Collector shall pay interest on the amount at the rate of four per cent per annum from the date of expiry of the said period.

11. *Payment of undisbursed dividend.*—The District Collector, Trichur, shall pay to every shareholder of the Society any amount due to him as dividend immediately before the appointed day, witihin a period of three months from that day:

Provided that if such amount is not paid within the period aforesaid, the District Collector shall pay interest on the amount at the rate of four per cent per annum from the date of expiry of the said period.

12. *Penalties.*—(1) Any person, who—

(a) having in his possession, custody or control any property forming part of the undertaking of the Society, wrongfully withholds such property from the Government or the Company; or

(b) wrongfully obtains possession of any property forming part of the undertaking of the Society which has vested in the Government or the Company under this Act; or

(c) wilfully withholds or fails to furnish to the Government or the Company as required by subsection (2) of section 6, any document which may be in his possession, custody or control,

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both:

Provided that the court trying any offence under clause (a) or clause (b) or clause (c) of this subsection may, at the time of convicting the accused person, order him to deliver up or refund, within a time to be fixed by the court, any property or cash wrongfully withheld or obtained or any document wilfully withheld or not furnished.

(2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government or of an officer authorised by the Government in this behalf.

13. *Offences by Companies.*—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible, to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

14. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceeding shall lie against the Government or the Company or any of its officers or other employees for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Government or the Company or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

15. *Power to make rules.*—The Government may, by notification in the Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

In the Budget Estimates for 1975-76, a provision of Rs. 1 lakh has been made for setting up an Ayurveda Drugs Manufacturing Corporation. Besides manufacturing medicines, the Corporation is also to undertake the cultivation of medicinal plants and herbs. With the above objects in view Government have registered the Pharmaceutical Corporation (Indian Medicines) Kerela Ltd. The intention was to make the S. K. V. A. Co-operative Pharmacy and Store, Trichur, the nucleus of the Corporation and for that purpose to take over its assets and liabilities by the Corporation. More than 50 per cent of the shares of the S. K. V. A. Co-operative Pharmacy and Stores are owned by Government. The Bill seeks to acquire the undertaking of the S. K. V. A. Co-operative Pharmacy and Stores, Trichur, and to transfer the same to the Corporation.

FINANCIAL MEMORANDUM

Clause 10 of the Bill seeks to provide that the Government shall pay to each shareholder of the Society an amount equal to the value of the shares held by him in the Society immediately before the appointed day. Clause 11 seeks to provide that every share-holder of the Society shall be paid the amount due to him as dividend immediately before the appointed day. The Bill also makes provision for the transfer of the undertaking of the Society to the Pharmaceutical Corporation (Indian Medicines) Kerala

Ltd. But, during the period intervening between the commencement of the Act and the date on which the undertaking of the society will be transferred to Government, Government will have to incur expenditure for the running of the Society which includes also the salary of the staff. Accordingly the approximate total non-recurring expenditure, if the Bill is passed into law, is estimated as follows:—

Refund of share capital Contribution of 888 A class members	Rs. 15,420	
Refund of share capital Contributed by 120 B class members	Rs. 10,200	
Undisbursed dividend	Rs. 5,000	
	Rs. 30,620	
Running cost for the Pharmacy for 1 month (Including salary of staff)	Rs. 60,000	(approximate)
Grand Total	Rs. 90,620	

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to empower the Government to direct, by order in writing, that the undertaking of the Society together with all its properties, assets, liabilities and obligations shall vest in the Company either on the date of publication of the direction or on such earlier or later date as may be specified in the direction. Clause 15 of the Bill seeks to empower the Government to make rules for carrying out the provisions of the Act.

The matters in respect of which orders may be issued or rules may be made are matters of administrative or routine nature or matters of detail. Further, the rules, after they are made, are subject to scrutiny by the Legislative Assembly. The delegation of legislative powers is thus of a normal character.

N. K. BALAKRISHNAN.